

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 08-0730 WHA

Plaintiff,

v.

MORIS FLORES, *et al.*

Defendants.

**ORDER DENYING DEFENDANT MORIS
FLORES' APPLICATION FOR LEAVE
TO FILE MOTION TO RECONSIDER
DENIAL OF MOTION TO CONTINUE**

One court day prior to the commencement of the April 4 trial — which has already been continued three times — defendant Moris Flores applies for leave to file a motion to reconsider the February 9 order denying his motion for a continuance (Dkt. No. 3395). This application is **DENIED**. The denial, however, is without prejudice to motions for postponement of cross-examination of individual witnesses upon an adequate showing of late production/disclosure and prejudice.

The application for leave to file the reconsideration motion does not present new, *material* facts that warrant reconsideration. *See* Civil L.R. 7-9; *School Dist. 1J, Multnomah County, Or. v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). The motion is based on the same premise as defendant Flores' earlier motion to continue — unpreparedness of counsel. The facts raised in the application are immaterial and/or not new. Many of the facts and types of complaints presented were considered and ruled upon in the February 9 order denying defendant Flores' continuance motion.

1 At this late hour, the jury has already been selected, opening arguments are imminent,
2 witnesses are lined up, and the USMS has invested large resources in security preparation for
3 the trial. One juror has already been lost and the defense has requested that a second juror be
4 excused. The remaining jurors have been told the case will be over by September 7 and the
5 clock is ticking. Exhaustive steps were taken to clear a jury for hardship and for cause —
6 including six long days of jury selection. Sufficient grounds have not been shown warranting
7 derailment of these massive efforts. In addition, the identities of civilian and cooperating
8 witnesses have been released to defendants and yet another continuance will only exacerbate
9 the risk to these witnesses. Moreover, witness memories are fading. We cannot afford to
10 further postpone the start of the trial without an exceedingly good cause.

11 As stated previously, the application for leave to file the motion for reconsideration is
12 **DENIED**. To address the defense's concerns about recent productions/disclosures by the
13 government, however, motions for postponement of cross-examination of individual witnesses
14 will be considered and granted where good cause is established.

15 Defendants Erick Lopez, Guillermo Herrera, Walter Cruz-Zavala, Angel Noel Guevara,
16 and Jonathan Cruz-Ramirez move to join in the application (Dkt. Nos. 3864, 3876, 3877, 3880,
17 3894). These joinder motions are **GRANTED** insofar as they seek to join the application for
18 *leave to file* a motion for reconsideration. As the application has been denied, there is no
19 reconsideration motion for the parties to join.
20

21 **IT IS SO ORDERED.**

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23 Dated: April 1, 2011.



24 WILLIAM ALSUP
25 UNITED STATES DISTRICT JUDGE
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